

**RULES
OF
DEPARTMENT OF REVENUE
INCOME TAX DIVISION**

**CHAPTER 560-7-8
RETURNS AND COLLECTIONS**

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(1) Definitions. As used in this regulation:

(a) Manufacturing. The term "manufacturing" means those establishments classified by the North American Industry Classification System (NAICS) Codes, published by the United States Office of Management and Budget, 2007 edition, that belong to Sectors 31-33.

(b) Manufacturing Facility. The term "manufacturing facility" means a single facility, including contiguous parcels of land, improvements to such land, buildings, building improvements, and any machinery or equipment used in manufacturing described by NAICS Sectors 31-33.

(c) Telecommunications. The term "telecommunications" means those establishments primarily engaged in providing telecommunications services described by NAICS Codes, 2007 edi-

tion, as:

1. NAICS Code 517210 for establishments primarily engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services;

2. NAICS Code 517110 for establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry;

3. NAICS Code 517911 for establishments primarily engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry; and

4. NAICS Code 517410 for establishments primarily engaged

in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.

(d) **Telecommunications Facility.** The term “telecommunications facility” means a single facility, including contiguous parcels of land, improvements to such land, buildings, building improvements, and any machinery or equipment used in providing the telecommunications services described by NAICS Codes 517210, 517110, 517911, and 517410.

(e) **Support Facility.** The term “support facility” refers to any establishment involved in the performance of activities designed primarily to support a manufacturing facility or a telecommunications facility, such as corporate offices, sales offices, computer operations facilities, warehouses, distribution centers, storage facilities, research and development facilities, laboratories, repair and maintenance facilities, telecommunications centers, regional or district administrative offices, and other related manufacturing or telecommunications support activities.

(f) **Qualified Investment Property.** The term “qualified investment property” means all property described in O.C.G.A. Sections 48-7-40.2(a)(2), 48-7-40.3(a)(2), and 48-7-40.4(a)(2) which is reasonably related or necessary to the manufacturing process or to providing telecommunications services. Qualified investment property also includes recycling machinery or equipment, recycling manufacturing facility, pollution control or prevention machinery or equipment, pollution control or prevention facility, and conversion from defense to domestic production. The Commissioner reserves the right to review each purchase or acquisition of property by a taxpayer for which the taxpayer intends to claim a

credit.

(g) Expansion of an Existing Manufacturing or Telecommunications Facility. The term “expansion of an existing manufacturing or telecommunications facility” means the capitalized purchase or acquisition of qualified investment property by a taxpayer for use in a manufacturing or telecommunications facility already existing in this state when the purchase or acquisition of such qualified investment property expands the taxpayer’s asset base and is directly related to the taxpayer’s manufacturing process or to providing telecommunications services. It does not mean the purchase or acquisition of qualified investment property for the purpose of repairing existing property.

(h) Project. The term “project” means a planned undertaking involving the capitalized purchase or acquisition of qualified investment property for the construction of an additional manufacturing or telecommunications facility or the expansion of an existing manufacturing or telecommunications facility. A project which is a planned expansion of an existing manufacturing or telecommunications facility must result in an expansion of the taxpayer’s asset base and be directly related to the taxpayer’s manufacturing process or to providing telecommunications services. For purposes of qualifying for this credit in conjunction with either the job tax credit, the headquarters job tax credit, the quality jobs tax credit, or the optional investment tax credit, a taxpayer may not undertake more than one project at the same time within a single facility, and each project must be confined to a single facility.

(i) Pollution Control or Prevention Machinery or Equipment. The term “pollution control or prevention machinery or equipment” means all tangible personal property, used in whole or in part, to reduce or eliminate air and water pollution by removing,

altering, disposing, or storing pollutants, contaminants, waste or heat.

(j) **Pollution Control or Prevention Facility.** The term “pollution control or prevention facility” means any facility, including land, improvements to land, buildings, building improvements, and any pollution control or prevention machinery or equipment whose primary purpose is to reduce air and water pollution, provided that such facility is in furtherance of applicable federal, state, or local standards for the abatement and control of air and water pollution and contamination.

(k) **Conversion from Defense to Domestic Production.** The term “conversion from defense to domestic production” means the conversion of a manufacturing or telecommunications facility’s production capabilities from those which are substantially dependent upon Department of Defense expenditures to those which have a commercial application in the private sector.

(l) **Cost of Qualified Investment Property.** The term “cost of qualified investment property” means the taxpayer’s basis in the property in the taxable year in which the credit is created.

(2) Calculation of Credit.

(a) **Basic Rate of Credit.** The basic rate of credit allowed against the taxes imposed under Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia varies according to whether the facility for which the qualified investment property is purchased or acquired is located in a county designated as a tier 1, tier 2, or tier 3 or 4 less developed area under O.C.G.A. Section 48-7-40:

1. **Tier 1 County.** If the manufacturing or telecommunications

facility is located in a county designated as tier 1, then the amount of the credit is equal to 5 percent of the cost of all qualified investment property purchased or acquired by the taxpayer for that facility in that taxable year.

2. Tier 2 County. If the manufacturing or telecommunications facility is located in a county designated as tier 2, then the amount of the credit is equal to 3 percent of the cost of all qualified investment property purchased or acquired by the taxpayer for that facility in that taxable year.

3. Tier 3 or 4 County. If the manufacturing or telecommunications facility is located in a county designated as tier 3 or 4, then the amount of the credit is equal to 1 percent of the cost of all qualified investment property purchased or acquired by the taxpayer for that facility in that taxable year.

(b) Higher Rate of Credit. In the event that the qualified investment property purchased or acquired by taxpayers consists of recycling machinery or equipment, a recycling manufacturing facility, pollution control or prevention machinery and equipment, a pollution control or prevention facility, or is used in the conversion from defense to domestic production, then the qualified investment property will be subject to a higher rate of credit. The amount of the higher rate of credit varies according to whether the qualified investment property is purchased or acquired for a facility located in a county designated as a tier 1, tier 2, or tier 3 or 4 less developed area under O.C.G.A. Section 48-7-40:

1. Tier 1 County. If the qualified investment property subject to the higher rate of credit is purchased or acquired for a facility located in a county designated as tier 1, then the amount of the credit is equal to 8 percent of the cost of such property purchased

or acquired by the taxpayer in that taxable year.

2. **Tier 2 County.** If the qualified investment property subject to the higher rate of credit is purchased or acquired for a facility located in a county designated as tier 2, then the amount of the credit is equal to 5 percent of the cost of such property purchased or acquired by the taxpayer in that taxable year.

3. **Tier 3 or 4 County.** If the qualified investment property subject to the higher rate of credit is purchased or acquired for a facility located in a county designated as tier 3 or 4, then the amount of the credit is equal to 3 percent of the cost of such property purchased or acquired by the taxpayer in that taxable year.

(c) **Office Space Cap in Recycling Manufacturing Facility.** Where the office space used to house support staff in a building that is part of a recycling manufacturing facility exceeds 10 percent of the building's total space, then the building will not be considered a component of the recycling manufacturing facility. The building and any improvements to the building will be subject to the basic rate of credit for qualified investment property. Only recycling machinery or equipment located in the building will be subject to the higher rate of credit for qualified investment property.

(3) Establishing Eligibility for the Credit.

(a) **Three-Year Threshold.** Taxpayers must have operated an existing manufacturing or telecommunications facility or related support facility in this state for three years (thirty-six months) and must have previously filed any required state tax returns in order to become eligible for the tax credit. Only qualified investment property which is purchased or acquired by taxpayers after the thirty-

six month eligibility requirement is met may be used to compute the tax credit. Qualified investment property purchased or acquired by taxpayers in taxable years prior to establishing the thirty-six month eligibility may not be claimed for those years by filing an amended tax return.

(b) **Eligible Taxpayer.** For the purpose of establishing eligibility, the "taxpayer" referenced is the entity that is required by law to file a return or pay tax. A partnership or business joint venture must have operated within the state for the immediately preceding thirty-six months to qualify for the credit. For example, the previous activity in Georgia of a parent, in the case of a corporation, a partner, in the case of a partnership or a business joint venture will not create eligibility for a new entity for the purposes of the thirty-six month threshold.

(c) **Approval of Project Plan.**

1. **Eligibility and Application Procedure; General Rule.** To be eligible for the credit provided for in O.C.G.A. Sections 48-7-40.2, 48-7-40.3, and 48-7-40.4, a taxpayer must purchase or acquire qualified investment property pursuant to a project plan. The taxpayer must submit a written application requesting approval of the project plan within thirty (30) days of the completion of the project. Such application must include a written narrative describing the project and a listing of the type, quantity, and cost of all qualified investment property purchased or acquired pursuant to the project plan and for which tax credits will be claimed.

2. **Procedure for Claiming Credit Before Completion of Project.** In the event a taxpayer elects to claim the credit before the completion of the project, but after the purchase or acquisition of qualified investment property in excess of the minimum thresh-

old amount, the taxpayer may submit an application for approval of the project plan along with the tax return on which the credit will be claimed. This preliminary application must be amended within thirty (30) days of the completion of the project.

3. Amendment of Application for Approval of Project Plan.

If necessary, a taxpayer may amend any application for approval of project plan by submitting additional project information.

4. Permission to File Late Application. In the event a taxpayer is unable to submit an application for approval of project plan within thirty (30) days of the completion of a project, the taxpayer may petition the Commissioner for express written approval to file an application after the thirty (30) day period has passed.

5. Duration of Project. The duration of a project shall not exceed three years unless expressly approved in writing by the Commissioner.

6. Minimum Threshold Amount.

(i) **For Projects Beginning Prior to January 1, 1995.** Before the credit may be claimed, the cost of all qualified investment property purchased or acquired by the taxpayer pursuant to the project plan must exceed a minimum threshold amount which varies according to whether the taxpayer's manufacturing facility is located in a county designated as a tier 1, tier 2, or tier 3 county under O.C.G.A. Section 48-7-40. Depending on whether the manufacturing facility is located in a tier 1, tier 2, or tier 3 county, the aggregate cost of the qualified investment property purchased or acquired by the taxpayer pursuant to the project plan must exceed \$1 million, \$3 million, and \$5 million, respectively.

(ii) **For Projects Beginning On or After January 1, 1995.** Before the credit may be claimed, the cost of all qualified investment property purchased or acquired by the taxpayer pursuant to the project plan must exceed a minimum threshold amount of \$50,000.

7. Certificate of Approval. If the project plan satisfies the requirements of this paragraph, the Commissioner shall issue to the taxpayer a certificate of approval.

8. Timing. The taxpayer shall claim the credit for qualified investment property purchased or acquired pursuant to the project plan in the year immediately following the taxable year in which the requisite minimum threshold amount is purchased or acquired by the taxpayer.

9. Documentation. At the time the credit is claimed, the taxpayer must submit to the Commissioner certification of the total cost of all qualified investment property purchased or acquired pursuant to the project plan. Such certification shall be on forms provided by the Commissioner and shall be attached to the taxpayer's state tax return.

(d) **Earliest Date of Eligibility.** In order to count towards establishing the minimum threshold amount or to qualify as a basis for claiming the credit, the purchase or acquisition of qualified investment property must have occurred no sooner than January 1, 1994. Qualified investment property purchased or acquired by taxpayers on or after January 1, 1994, will only be eligible as a basis for the credit if all of the other requirements of these regulations are met.

(e) **Establishing New Eligibility.** The sale, merger, acquisi-

tion, reorganization or transfer in liquidation or bankruptcy of a taxpayer does not create new eligibility for any succeeding taxpayer, but any unused credits may be transferred and continued by any transferee of the taxpayer as long as the transferee meets other applicable requirements in law and regulation. If the taxpayer which earned the credits elects to transfer unused credits, such taxpayer must provide the transferee with a copy of the original approval of the credits it received from the Department, and a written statement indicating the assets transferred and the unused credit available at the time of transfer. When a taxpayer merely changes its name, recapitalizes, or liquidates subsidiaries not related to the manufacturing or telecommunications facility, however, no new eligibility need be established.

(4) **Carry Forward.** A credit which is claimed but not used in a taxable year may be carried forward for ten years from the close of the taxable year in which qualified investment property with an aggregate cost exceeding the minimum threshold amount is purchased or acquired, provided that such qualified investment property continues to be used in the manufacturing, recycling, or pollution control processes or in providing telecommunications services.

(5) **Maximum Amount of Credit.** The investment tax credit claimed or taken by a taxpayer in any taxable year shall not exceed 50 percent of the taxpayer's Georgia state income tax liability derived from operations within this state.

(6) **Coordination with Job, Quality Jobs, Headquarters Job and Optional Investment Tax Credits.** Except as authorized under O.C.G.A. Section 48-7-40.2(d)(2), which authorizes certain taxpayers in tier 1 counties to claim both the job tax credit and the investment tax credit for a given project, a taxpayer may not claim or carry forward the investment tax credit for a given project in any

year in which either a job tax credit is claimed or carried forward under O.C.G.A. Sections 48-7-40 or 48-7-40.1, a quality jobs tax credit or headquarters job tax credit is claimed under O.C.G.A. Section 48-7-40.17, or an optional investment tax credit is claimed under O.C.G.A. Sections 48-7-40.7, 48-7-40.8, or 48-7-40.9. Neither may a taxpayer alternately claim the investment tax credit in one year and either the job, quality jobs, headquarters job, or optional investment tax credit in the next year for a given project. The job, investment, and optional investment tax credits are not interchangeable. Taxpayers may elect to claim only one of the job, investment, or optional investment credits for a given project.

(7) Leases of Qualified Investment Property. Any lease for a period of five years or more of any real or personal property used in the construction or expansion of a manufacturing or telecommunications facility which would otherwise constitute qualified investment property will be treated as the purchase or acquisition of qualified investment property by the lessee. Such property will be treated as having been purchased or acquired by the taxpayer in the taxable year in which the lease becomes binding on the taxpayer and the lessor. In establishing eligibility and calculating the investment credit based on such property, the taxpayer will use the fair market value of the leased property as the cost of qualified investment property.

(8) Schedule of Additional Information. In addition to the information required under paragraph (c)(1) of O.C.G.A. Sections 48-7-40.2, 48-7-40.3, and 48-7-40.4, taxpayers must include for every year in which they claim the credit the following information:

(a) The taxpayer's basis in all qualified investment property purchased or acquired by the taxpayer in the taxable year;

(b) The fair market value of all leased property which may be treated as qualified investment property for the taxable year;

(c) A list of which recoverable materials are being recycled, and to what extent they are components of manufactured products;

(d) A certification from the Department of Natural Resources that all pollution control or prevention machinery or equipment that is a basis for a credit is necessary and adequate for the purposes intended; and

(e) Any other information that the Commissioner may reasonably require.

(9) **Pass-Through Entities.** When the taxpayer is a pass-through entity, and has no income tax liability of its own, the tax credits will pass to its members, shareholders, or partners based on the year ending profit/loss percentage. The credit forms will initially be filed with the tax return of the taxpayer to establish the amount of the credit available for pass through. The credit will then pass through to its shareholders, members, or partners to be applied against the tax liability on their income tax returns. The credits are available for use as a credit by the shareholders, members, or partners for their tax year in which the income tax year of the pass-through entity ends. For example: A partnership earns the credit for its tax year ending January 31, 2009. The partnership passes the credit to a calendar year partner. The credit is available for use by the partner beginning with the calendar 2009 tax year.

(10) **Specific Applications.**

(a) Examples of some common items that do not qualify as an

expansion for the investment tax credit include, but are not limited to, items used for safety, items and materials used in the repair, refurbishing, or reconditioning of machinery, hand tools, research and development expenditures, materials used in the repair of existing buildings, legal fees, consulting fees, expenditures for office, or office furniture, computer hardware or software which does not control manufacturing machinery or equipment, and automobiles.

Authority: O.C.G.A. Sections 48-2-12, 48-7-40.2, 48-7-40.3, and 48-7-40.4.